

## BOARD ACTION MEMORANDUM

**TO:** NCUA Board

**DATE:** June 6, 2011

**FROM:** Office of General Counsel

**SUBJ:** Technical Correction,  
12 C.F.R. Part 750

**ACTION REQUESTED:** NCUA Board approval of interim final regulation, "Golden Parachute and Indemnification Payments - Technical Correction," attached, with a 30-day comment period.

**OTHER OFFICES CONSULTED:** In view of the technical nature of the amendment, other offices were not consulted.

**SUBMITTED TO INSPECTOR GENERAL FOR REVIEW:** Yes.

**BUDGET IMPACT, IF ANY:** None.

**RESPONSIBLE STAFF MEMBERS:** Ross Kendall, Special Counsel to the General Counsel, and Pamela Yu, Staff Attorney, Office of General Counsel.

**SUMMARY:** At its May 19, 2011 meeting, the NCUA Board adopted new part 750, a comprehensive rule to govern golden parachute and indemnification payments by federally insured credit unions to institution affiliated parties. The final rule was published in the May 26, 2011 Federal Register. 76 FR 30510 (May 26, 2011). Staff has discovered that, in one respect, the rule text is inconsistent with the intent of the rule. As discussed below, a technical change to the rule will correct this inconsistency.

In response to comments, the Board recognized in the preamble that credit unions, like other non-profits, are permitted to offer deferred compensation plans permissible under §457 of the Internal Revenue Code (IRC) as an alternative for their executives. The Board's intent was that plans permissible under §457(b) be excluded outright from the definition of golden parachute payment, in the same way the rule treats similar retirement and deferred compensation plans permissible under §401(k) of the IRC. The preamble does not provide any elaboration on the distinction between plans offered under subsections (b) and (f) of §457, even though plans permissible under those two subsections are significantly different. The rule text likewise makes no distinction and simply refers to plans "under §457" as being excluded from the definition. To conform the rule text to the intent of the Board, the reference in the rule should be to plans under §457(b). The interim final rule makes this correction.

Staff recommends that the interim final rule be made effective as of the same date as the original rule, to avoid any confusion. As discussed in the preamble, comments are invited from the public concerning the action, although we anticipate few if any comments will be submitted, given the technical nature of the amendment.

**RECOMMENDED ACTION:** That the NCUA Board approve the attached interim final rule with a 30-day comment period.

**ATTACHMENT:** Interim final rule.